

**Remarks**

Claims 1-28 and 41-56 currently remain pending. Claims 1-12, 14, 15, 18-20, 22-28, 41-50 and 52-55 stand rejected. Claims 13, 16, 17, 21 and 51 stand objected to. Claim 56 is allowed. Claims 6, 8, 23, 46 and 55 are amended herein. The Assignee respectfully requests reconsideration of the rejections and objections, and requests allowance of claims 1-28 and 41-56.

**Claim Amendments**

Claims 6, 8, 23 and 55 are amended to more closely align the wording of those claims with typical Markush-type claiming practice.

Claim 46 is amended to replace the word "transmit" with the word "transmitting" to more properly claim the method set forth therein.

As each of these amendments is based on matters of style instead of content, the amendments are not intended as a surrender of subject matter or scope of the affected claims.

**Claim Rejections Under 35 U.S.C. § 102**

Claims 1-10, 23-28, 41-48 and 55 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,694,414 to Smith et al. (hereinafter "Smith"). (Page 2 of the Office action.) As a basis of discussion, independent system claim 1 is reproduced below in its entirety:

1. A system for selecting spectrum comprising:
  - a licensed spectrum transceiver configured to communicate over licensed spectrum;
  - an unlicensed spectrum transceiver configured to communicate over unlicensed spectrum; and
  - a spectrum selector configured to select the licensed transceiver or the unlicensed transceiver for communication.

Independent method claim 41 incorporates similar provisions.

The Office action alleges that Smith teaches each of these provisions. (Page 2 of the Office action.) The Assignee respectfully disagrees with the rejection based on the following

discussion.

#### *Licensed and Unlicensed Spectrum Transceivers*

The Office action indicates that the transmitter (Fig. 2) and the receiver (Fig. 3) of Smith, with further reference to Figs. 8-10, and column 3, lines 8-18, anticipate the licensed spectrum transceiver and the unlicensed spectrum transceiver of claim 1. The Assignee respectfully disagrees.

Generally, Smith discloses a *dual-mode* transmitter (Fig. 2) and a *dual-mode* receiver (Fig. 3). (See also column 6, lines 23-35; and column 7, lines 14-35.) The transmitter and receiver are “dual-mode” in the sense that each may be operated in either a “cellular” (i.e., narrowband) mode, or a “microcellular” (i.e., spread-spectrum) mode. (Column 5, lines 50-67.)

Such a receiver and transmitter are distinguished from the licensed spectrum transceiver and the unlicensed spectrum transceiver of claims 1 and 41. Each of the transmitter and receiver of Smith only provide for a *single* transmitter or receiver capable of *switching* between narrowband and spread-spectrum modes, not *two separate transceivers*, as provided for in claims 1 and 41. (See again Figs. 2 and 3; column 6, lines 23-25; and column 7, lines 14 and 15.) Due to this limitation, the Smith transmitter and receiver can only communicate in *either* narrowband or spread-spectrum mode *at any particular point in time*. (See, for example, column 6, lines 47-51; and column 8, lines 9-14.) Thus, Smith does not disclose *two separate transceivers*, each configured to communicate over *separate spectra*, as provided for in claims 1 and 41: “a licensed spectrum transceiver *configured to communicate over licensed spectrum*,” and “an unlicensed spectrum transceiver *configured to communication over unlicensed spectrum*.” (Emphasis supplied.)

#### *Spectrum Selector*

The Office action also indicates that the mode controller 103 of the Smith transmitter and receiver anticipates the spectrum selector of claim 1 and 41, which is “configured to select the licensed transceiver or the unlicensed transceiver for communication.” (Page 2 of the Office action.) However, according to Smith, the mode controller 103 selects between narrowband and spread-spectrum *modes* in both the transmitter and receiver. (Fig. 6, lines 47-55; and column 7, lines 37-50.) Thus, the mode controller 103 is not configured to select a licensed *transceiver* or

an unlicensed *transceiver*, as set forth in claims 1 and 41.

Thus, on the basis of the foregoing, the Assignee respectfully asserts that independent claims 1 and 41 are allowable in view of Smith, and such indication is respectfully requested.

Also, claims 2-10 and 23-28 depend from independent claim 1, and claims 42-48 and 55 depend from independent claim 41, thus incorporating the provisions of their associated independent claims. Thus, the Assignee contends that claims 2-10, 23-28, 42-48 and 55 are allowable for at least the reasons provided above in support of claims 1 and 41, and such indication is respectfully requested.

Therefore, in light of the discussion presented above, the Assignee respectfully requests withdrawal of the 35 U.S.C. § 102 rejection of claims 1-10, 23-28, 41-48 and 55.

#### Claim Rejections Under 35 U.S.C. § 103

Claims 11, 12 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith in view of U.S. Patent No. 6,873,607 to Hamada et al. (Page 5 of the Office action.) Also, claims 14, 15 and 50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of U.S. Patent No. 6,970,824 to Shibutani. (Page 6 of the Office action.) Claims 18-20, 52 and 53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of U.S. Patent No. 6,892,068 to Karabinis et al. (Page 6 of the Office action.) Finally, claims 22 and 54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of U.S. Patent No. 6,952,434 to Jagannatharao et al. (Page 7 of the Office action.) The Assignee respectfully traverses these rejections based on the discussion set forth above.

More specifically, claims 11, 12, 14, 15, 18-20 and 22 depend from independent claim 1, and claims 49, 50 and 52-54 depend from independent claim 41, thus incorporating the provisions of their associated independent claims. Thus, the Assignee asserts that claims 11, 12, 14, 15, 18-20, 22, 49, 50 and 52-54 are allowable for at least the reasons presented above in support of claims 1 and 41, and such indication is respectfully requested.

Thus, the Assignee respectfully requests that the 35 U.S.C. § 103 rejections of claims 11, 12, 14, 15, 18-20, 22, 49, 50 and 52-54 be withdrawn.

Indication of Allowable Subject Matter

The Office action indicates that claims 13, 16, 17, 21 and 51 stand "objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." (Page 7 of the Office action.) The Assignee thanks the Examiner for his consideration of these claims. However, claims 13, 16, 17 and 22 depend from independent claim 1, and claim 51 depends from independent claim 41, thus incorporating the provisions of their independent claims. Therefore, the Assignee asserts that claims 13, 16, 17, 21 and 51 are allowable in their present form for at least the reasons provided above for claims 1 and 41, and such indication is respectfully requested.

Thus, in light of the above discussion, the Assignee respectfully requests withdrawal of the objection to claim 13, 16, 17, 21 and 51.

Also according to the Office action, claim 56 is allowed in its present form. (Page 8 of the Office action.) The Assignee thanks the Examiner for his consideration of that claim.

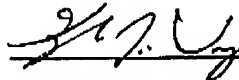
Conclusion

Based upon the above remarks, the Assignee submits that claims 1-28 and 41-56 are allowable. Additional reasons in support of patentability exist, but such reasons are omitted in the interest of clarity and brevity. The Assignee thus respectfully requests allowance of claims 1-28 and 41-56.

The Assignee believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765 accordingly.

Respectfully submitted,

Date: 4/6/06



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